

House File 2652 - Enrolled

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HOUSE FILE 2652

AN ACT
RELATING TO CIVIL AND CRIMINAL PROCEDURE INCLUDING THE ISSUANCE
OF AND VIOLATIONS OF CERTAIN CIVIL PROTECTIVE ORDERS AND
CRIMINAL NO=CONTACT ORDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 236.7, subsection 1, Code 2005, is amended to read as follows:

1. A proceeding under this chapter shall be held in accordance with the rules of civil procedure, except as otherwise set forth in this chapter and in chapter 664A, and is in addition to any other civil or criminal remedy.

Sec. 2. Section 562A.27A, subsection 3, paragraph a, Code 2005, is amended to read as follows:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

Sec. 3. Section 562B.25A, subsection 3, paragraph a, Code 2005, is amended to read as follows:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

Sec. 4. Section 598.41, subsection 3, paragraph j, Code Supplement 2005, is amended to read as follows:

j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include, but is not limited to, commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section ~~236.8~~ 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

Sec. 5. NEW SECTION. 664A.1 DEFINITIONS.

For purposes of this chapter:

1. "No=contact order" means a court order issued in a criminal proceeding requiring the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's family.

2. "Protective order" means a protective order issued pursuant to chapter 232, a court order or court-approved consent agreement entered pursuant to chapter 236, including a valid foreign protective order under section 236.19, subsection 3, a temporary or permanent protective order or order to vacate the homestead under chapter 598, and an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault under section 708.2A.

3. "Victim" means a person who has suffered physical, emotional, or financial harm as a result of a public offense, as defined in section 701.2, committed in this state.

Sec. 6. NEW SECTION. 664A.2 APPLICABILITY.

1. This chapter applies to no=contact orders issued for violations or alleged violations of sections 708.2A, 708.7, 708.11, 709.2, 709.3, and 709.4, and any other public offense for which there is a victim.

2. A protective order issued in a civil proceeding shall

3 4 be issued pursuant to chapter 232, 236, or 598. Punishment
3 5 for a violation of a protective order shall be imposed
3 6 pursuant to section 664A.7.

3 7 Sec. 7. NEW SECTION. 664A.3 ENTRY OF TEMPORARY NO=
3 8 CONTACT ORDER.

3 9 1. When a person is taken into custody for contempt
3 10 proceedings pursuant to section 236.11 or arrested for any
3 11 public offense referred to in section 664A.2, subsection 1,
3 12 and the person is brought before a magistrate for initial
3 13 appearance, the magistrate shall enter a no=contact order if
3 14 the magistrate finds both of the following:

3 15 a. Probable cause exists to believe that any public
3 16 offense referred to in section 664A.2, subsection 1, or a
3 17 violation of a no=contact order, protective order, or consent
3 18 agreement has occurred.

3 19 b. The presence of or contact with the defendant poses a
3 20 threat to the safety of the alleged victim, persons residing
3 21 with the alleged victim, or members of the alleged victim's
3 22 family.

3 23 2. A no=contact order issued pursuant to this section
3 24 shall be issued in addition to any other conditions of release
3 25 imposed by a magistrate pursuant to section 811.2. The no=
3 26 contact order has force and effect until it is modified or
3 27 terminated by subsequent court action in a contempt proceeding
3 28 or criminal or juvenile court action and is reviewable in the
3 29 manner prescribed in section 811.2. Upon final disposition of
3 30 the criminal or juvenile court action, the court shall
3 31 terminate or modify the no=contact order pursuant to section
3 32 664A.5.

3 33 3. A no=contact order requiring the defendant to have no
3 34 contact with the alleged victim's children shall prevail over
3 35 any existing order which may be in conflict with the no=
4 1 contact order.

4 2 4. A no=contact order issued pursuant to this section
4 3 shall restrict the defendant from having contact with the
4 4 victim, persons residing with the victim, or the victim's
4 5 immediate family.

4 6 Sec. 8. NEW SECTION. 664A.4 NOTICE OF NO=CONTACT ORDER.

4 7 1. The clerk of the district court or other person
4 8 designated by the court shall provide a copy of the no=
4 9 contact order to the victim pursuant to this chapter and
4 10 chapter 915.

4 11 2. The clerk of the district court shall provide a notice
4 12 and copy of the no=contact order to the appropriate law
4 13 enforcement agencies and the twenty=four=hour dispatcher for
4 14 the law enforcement agencies in the same manner as provided in
4 15 section 236.5. The clerk of the district court shall provide
4 16 a notice and copy of a modification or vacation of a no=
4 17 contact order in the same manner.

4 18 Sec. 9. NEW SECTION. 664A.5 MODIFICATION == ENTRY OF
4 19 PERMANENT NO=CONTACT ORDER.

4 20 If a defendant is convicted of, receives a deferred
4 21 judgment for, or pleads guilty to a public offense referred to
4 22 in section 664A.2, subsection 1, or is held in contempt for a
4 23 violation of a no=contact order issued under section 664A.3 or
4 24 for a violation of a protective order issued pursuant to
4 25 chapter 232, 236, or 598, the court shall either terminate or
4 26 modify the temporary no=contact order issued by the
4 27 magistrate. The court may continue the no=contact order in
4 28 effect for a period of five years from the date the judgment
4 29 is entered or the deferred judgment is granted, regardless of
4 30 whether the defendant is placed on probation.

4 31 Sec. 10. NEW SECTION. 664A.6 MANDATORY ARREST FOR
4 32 VIOLATION OF NO=CONTACT ORDER.

4 33 1. If a peace officer has probable cause to believe that a
4 34 person has violated a no=contact order issued under this
4 35 chapter, the peace officer shall take the person into custody
5 1 and shall take the person without unnecessary delay before the
5 2 nearest or most accessible magistrate in the judicial district
5 3 in which the person was taken into custody.

5 4 2. If the peace officer is investigating a domestic abuse
5 5 assault pursuant to section 708.2A, the officer shall also
5 6 comply with sections 236.11 and 236.12.

5 7 Sec. 11. NEW SECTION. 664A.7 VIOLATION OF NO=CONTACT
5 8 ORDER OR PROTECTIVE ORDER == CONTEMPT OR SIMPLE MISDEMEANOR
5 9 PENALTIES.

5 10 1. Violation of a no=contact order issued under this
5 11 chapter or a protective order issued pursuant to chapter 232,
5 12 236, or 598, including a modified no=contact order, is
5 13 punishable by summary contempt proceedings.

5 14 2. A hearing in a contempt proceeding brought pursuant to

5 15 this section shall be held not less than five and not more
5 16 than fifteen days after the issuance of a rule to show cause,
5 17 as determined by the court.

5 18 3. If held in contempt for a violation of a no-contact
5 19 order or a modified no-contact order for a public offense
5 20 referred to in section 664A.2, subsection 1, or held in
5 21 contempt of a no-contact order issued during a contempt
5 22 proceeding brought pursuant to section 236.11, the person
5 23 shall be confined in the county jail for a minimum of seven
5 24 days. A jail sentence imposed pursuant to this subsection
5 25 shall be served on consecutive days. No portion of the
5 26 mandatory minimum term of confinement imposed by this
5 27 subsection shall be deferred or suspended. A deferred
5 28 judgment, deferred sentence, or suspended sentence shall not
5 29 be entered for a violation of a no-contact order or modified
5 30 no-contact order and the court shall not impose a fine in lieu
5 31 of the minimum sentence, although a fine may be imposed in
5 32 addition to the minimum sentence.

5 33 4. Violation of a no-contact order entered for the offense
5 34 or alleged offense of domestic abuse assault in violation of
5 35 section 708.2A or a violation of a protective order issued
6 1 pursuant to chapter 232, 236, or 598 constitutes a public
6 2 offense and is punishable as a simple misdemeanor.
6 3 Alternatively, the court may hold a person in contempt of
6 4 court for such a violation, as provided in subsection 3.

6 5 5. A person shall not be held in contempt or convicted of
6 6 violations under multiple no-contact orders, protective
6 7 orders, or consent agreements, for the same set of facts and
6 8 circumstances that constitute a single violation.

6 9 Sec. 12. NEW SECTION. 664A.8 EXTENSION OF NO-CONTACT
6 10 ORDER.

6 11 Upon the filing of an application by the state which is
6 12 filed within ninety days prior to the expiration of a modified
6 13 no-contact order, the court shall modify and extend the no-
6 14 contact order for an additional period of five years, unless
6 15 the court finds that the defendant no longer poses a threat to
6 16 the safety of the victim, persons residing with the victim, or
6 17 members of the victim's family. The number of modifications
6 18 extending the no-contact order permitted by this section is
6 19 not limited.

6 20 Sec. 13. Section 708.2A, subsection 5, paragraph a, Code
6 21 2005, is amended to read as follows:

6 22 a. A conviction for, deferred judgment for, or plea of
6 23 guilty to, a violation of this section which occurred more
6 24 than ~~six~~ twelve years prior to the date of the violation
6 25 charged shall not be considered in determining that the
6 26 violation charged is a second or subsequent offense.

6 27 Sec. 14. Section 708.2A, subsection 7, Code 2005, is
6 28 amended to read as follows:

6 29 7. If a person is convicted for, receives a deferred
6 30 judgment for, or pleads guilty to a violation of this section,
6 31 the court shall modify the no-contact order issued upon
6 32 initial appearance in the manner provided in section ~~236.14~~
6 33 664A.5, regardless of whether the person is placed on
6 34 probation.

6 35 Sec. 15. Section 709.22, subsection 3, paragraph c,
7 1 unnumbered paragraph 1, Code Supplement 2005, is amended to
7 2 read as follows:

7 3 The right to seek a no-contact order under section ~~709.20~~
7 4 664A.3 or 915.22, if your attacker is arrested for sexual
7 5 assault.

7 6 Sec. 16. Section 901.5, subsection 7A, Code Supplement
7 7 2005, is amended by striking the subsection.

7 8 Sec. 17. Section 907.3, subsection 1, paragraph i, Code
7 9 Supplement 2005, is amended to read as follows:

7 10 i. The offense is a conviction for or plea of guilty to a
7 11 violation of section ~~236.8~~ 664A.7 or a finding of contempt
7 12 pursuant to section ~~236.8 or 236.14~~ 664A.7.

7 13 Sec. 18. Section 907.3, subsection 2, paragraph b, Code
7 14 Supplement 2005, is amended to read as follows:

7 15 b. Section ~~236.8~~ 664A.7 or for contempt pursuant to
7 16 section ~~236.8 or 236.14~~ 664A.7.

7 17 Sec. 19. Section 907.3, subsection 3, paragraph b, Code
7 18 Supplement 2005, is amended to read as follows:

7 19 b. A sentence imposed pursuant to section ~~236.8 or 236.14~~
7 20 664A.7 for contempt.

7 21 Sec. 20. Section 915.50, subsection 3, Code 2005, is
7 22 amended to read as follows:

7 23 3. The right to receive a criminal no-contact order upon a
7 24 finding of probable cause, pursuant to section ~~236.14~~ 664A.3.

7 25 Sec. 21. Sections 236.8, 236.14, 708.12, and 709.20, Code

7 26 2005, are repealed.

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CHRISTOPHER C. RANTS

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Speaker of the House

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JEFFREY M. LAMBERTI

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President of the Senate

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I hereby certify that this bill originated in the House and
is known as House File 2652, Eighty-first General Assembly.

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MARGARET THOMSON

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Chief Clerk of the House

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Approved _____, 2006

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THOMAS J. VILSACK

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Governor